

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

27907

FILE: B-214785

DATE: April 6, 1984

MATTER OF: Randolph Engineering, Inc.

DIGEST:

1. A protest based on an allegation of an impropriety in a solicitation that was apparent prior to bid opening must be filed prior to bid opening in order to be considered on the merits.
2. GAO does not consider allegations of predatory pricing in violation of the Robinson-Patman Act because that Act is not applicable to government contracts and violations of the anti-trust laws of the United States are within the jurisdiction of the Department of Justice.

Randolph Engineering, Inc. protests the specifications contained in solicitation DLA100-84-B-0419, issued by the Defense Logistics Agency, as well as the award of a contract to the low bidder. According to Randolph, the specifications are confusing and "not of sufficient accuracy in its requirements." Randolph also contends that an award to the low bidder would be improper because that firm may be engaged in predatory pricing in violation of the Robinson-Patman Act, in order to eliminate Randolph as a competitor for government contracts.

We dismiss the protest.

First, the allegation concerning the confusing nature of the specifications is untimely. Our Bid Protest Procedures, 4 C.F.R. § 21.2(b) (1983), require that protests based on alleged improprieties in a solicitation which are apparent prior to bid opening, shall be filed prior to bid opening to be considered on the merits. Bid opening in this case occurred on March 16, 1984. However, the protest was not filed until March 28. We will, therefore, not consider this allegation.

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We also will not consider Randolph's allegation of the possible violation of the Robinson-Patman Act, 15 U.S.C. 136 (1982), for several reasons. First, the submission of an extremely low or below cost bid does not itself provide a basis for rejection of a bid. Barrier Industries, Inc., B-210050, January 6, 1983, 83-1 CPD 11. Second, the Robinson-Patman Act itself is not applicable to government contracts. R. E. Skinner & Associates, B-201064, November 18, 1980, 80-2 CPD 376. Finally, GAO cannot consider allegations of anti-trust violations because this is a matter to be considered by the Department of Justice. Id. Thus, if Randolph has what it believes is evidence of the violation of the anti-trust laws of the United States, it should refer the evidence to the Department of Justice.

The protest is dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel